

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date: **May 14, 2007**

Time: **9:00am**

Place: **Backman Title**

167 E 6100 S, Ste 250

Members

(Attendees = x)

Commission Members

xChairperson, Darwin L. Johnson, *Wasatch* xJoyce W. Clark, *Washington*

xDavid M. Lattin, *Salt Lake*

xGlen W. Roberts, *Utah*

xR. Curt Webb, *Cache*

Department Staff

John E. "Mickey" Braun, Jr.
Ass't Commissioner

xPerri Babalis
AG Legal Counsel

Darrel Powell
Dir. Market Conduct

xMark Kleinfield
Admin. Law Judge

xGerri Jones
MC Examiner

xSheila Curtis
MC Examiner

xJilene Whitby
PIO/Recorder

Public

Roy Poll

Jeff Wiener

David Moore

Paul Newton

MINUTES

- I. **Welcome and Introductions** / Darwin L. Johnson, Chair
Darwin began the meeting at 9:09a.m. and introduced the visitors.
- II. **Adoption of Minutes of Previous Meeting**
Curt **moved** to accept the minutes and Glen seconded it. The vote was unanimous.
- III. **Review & Concur with Licensee Report for January & February**
David **moved** to accept the Licensee Report and Joyce seconded it. The vote was unanimous.
- IV. **Number of Cases Open & Closed**
 - ☐ Darwin asked how long cases stayed on the report. Sheila said indefinitely.
 - ☐ Curt noted that the formatting was wrong.
 - ☐ Complaints called into the office are often settled during the initial call.
 - ☐ The report noted seven new complaints that had not yet been investigated.
 - ☐ If a complaint goes on to be investigated it is taken off the complaint list.
 - ☐ Glen was sent a form letter regarding a complaint he filed with the department some time ago. He could not remember what the complaint was about. He suggested identifying the complaint on the letter.
 - ☐ Joyce noted an instance where a member of her family who was having a home built. The builder switched the construction loan to another home he was building. Now her relative can't close. Gerri said they had other cases like this they were working on.
 - ☐ Curt asked if there is a trend in complaints? Gerri said they come in clusters. It does not seem to depend on the time of year. Gerri said they never catch-up.
 - ☐ Curt made a **motion** to concur with the report and Joyce seconded it. The vote was unanimous.
- V. **Review & Concur with Enforcement Case Report** / Mark Kleinfield
A Stipulation and Order has been drawn-up on NETCO Title Insurance Agency for sponsoring a hole-in-one. The suggested penalty is \$750. Currently they do not have a representative in Utah. The department has asked them to appoint one soon. The person responsible for setting up the hole-in-one was unaware of the rule and has since left NETCO.

Curt made a **motion** to enforce the proposed penalty and Glen seconded it. The vote was unanimous, 5-0, in favor of the motion.

VI. Old Business

• Proposed Rule R592-6 & Escrow Instructions - Update / Glen

- ULTA provided Glen with suggested changes to this rule and instructions. They want Subsection R592-6-4(4) of the rule removed regarding material changes to the instructions.
 - Paul noted that HUD instructions were always the same. If we allow these instructions to be changed the changes will be material. There must be uniformity for splits.
 - Curt asked Paul how ULTA felt about not allowing modification to these instructions? Paul thought certain situations would require modification.
 - David Moore said that taking this paragraph out would lock us into recording and then disbursing, in that order. Glen said it locked the buyer's side of the deal into being the escrow. It also creates a single fiduciary, Paul said. Curt said that by doing it this way you get everyone to agree and sign the agreement. If we leave it in, the buyers and sellers have to agree and sign. By taking it out you also require the lender to sign. David Moore noted that by leaving it in no one has to agree. Joyce thought that the intent of creating the escrow instruction and rule was to create a single fiduciary. Roy Poll said that hopefully deleting it will not be used to hold up a transaction.
 - Darwin asked Paul if Jeff Jensen had seen the rule and instructions? Paul said he had.
- Curt made a **motion** to take out lines 50-54 from the proposed rule R592-6-4(4), which Joyce seconded. The vote was unanimous in its favor.
- Curt questioned when the instruction form should be signed, as noted in lines 38-40. Nothing gets signed before the REPC. If this implies that signatures must be made before the closing then we need to revisit this. What was the intent of (b)?
 - Glen suggested changing the wording to "on or before closing."
 - Curt said that if it is a split we need to tell the other title company right away, but we don't need to fill out the form.
 - The following wording changes to (b) were suggested by Commission members and attendees: "(1) A split closing may be conducted if: (b) a Split Closing Instructions Form is completed and executed by the buyer, seller, and by the persons conducting the split closing, not later than the date of the closing." Glen said; "What we are saying to the industry is, buyers side collects all documents, has the money and will record." A single fiduciary is created because the lender is most at risk. No electronic recordings will be allowed. Joyce made the **motion** to accept the proposed language modification (above) for paragraph (b) of R592-6-4.(1). Glen seconded it. David Moore asked if a deed could be delivered through Simplifile? No. The goal is to have one fiduciary. Glen noted that the instructions deal with the granting of title where the deed must be delivered. The vote was unanimous in favor of the motion.
- Curt made the **motion** to accept the red line changes from ULTA on the Split Closing Instructions, attached to the rule. Joyce seconded it. The vote was unanimous.
- It was agreed to change the title of the instructions to "Split Closing Instructions Form," and delete the wording "Agreement Upon." The word "agreement" will be made lower case throughout the rule and form.
- Perri suggested "inserting" the instructions form to R592-6-4(3)(c). It will be a part of the text of the rule rather than be referred to as an attachment.
- Glen said wording in the rule needed to match the new instructions title.

- ❑ Perri suggested putting the instructions form after (3)(c) and show it as a Table, as instructed by Rulemaking.
- ❑ Glen made the **motion** to amended lines 114 and 115 by deleting words, “and other supplements thereto.” Curt seconded it and the vote was unanimous.
- ❑ Glen made the **motion** to amend language in R592-6-4.(4)(a) line 50 to, "For purposes of this rule all persons shall use the following Split Closing Instructions Form." Also include the modification of R592-6-3(3), on line 25 that should read; "Split Closing Instructions Form" means the Split Closing Instructions Form included in Subsection 4(4) of this rule." David seconded it and the vote was unanimous.
- ❑ Glen made a **motion** that the modification made to Rule R592-6 as amended, be approved. Joyce seconded it and the vote was unanimous in its favor.
- ❑ Gerri will make the above changes to the rule and instructions then email it to the Commission for their approval. At that point it will go to public comment and hearing by the end of May.
- **Update - Commission Member Replacement / Mickey**
At 11:30 a.m. Glen made a **motion** to discuss proposed replacements in closed session and Joyce seconded it. The vote was unanimous in its favor. The Commission took a short break. The Commission reconvened at 11:40 a.m. in Open Session and discussed other items on the agenda while members of the public were in attendance.
- **Proposed "Boilerplate Order" to Streamline Investigations / Mickey**
Perri reported that Shelly Wismer, a Real Estate Division AG attorney, who sits on the Real Estate Board, applauded the Title Commission for referring cases to an ALJ, who is trained in the law. This cuts down on appeals. Real Estate has eight investigators and the Insurance Department has two. The Real Estate Division dedicates one investigator to expedite the easy cases. Perri suggested the department spend a certain amount of time each week on easy cases. Gerri said they only had about five complaints that fit this description.
 - ❑ Glen noted that since title pays for an investigator then the commission should be able to decide what that person does. Should that person spend time preparing rules?
 - ❑ David asked if Real Estate was keeping up on their complaints. Gerri said they were not. Joyce said that their peers think the Commission should be doing more to help with enforcement. David said the Commission is not an investigative body. Curt reported that the industry tells him they are submitting investigations. Gerri said the industry tells us they don't want to report because they don't have proof or don't want their name disclosed. David Moore said that class members complain that when they report an infraction, investigators end up on their doorstep to question them.
 - ❑ Darrel said they are working on boilerplates to deal with a couple of different issues to help expedite the complaint process.
 - ❑ Curt asked which of the list of violations were market conduct issues? They are those violations of R590-153 of which there are 9 this time; R592-2, R592-3, 31A-23a-406(5), and 31A-23a-402(5). Perri said the Commission needed to know how Stipulation and Orders (S&O) are processed. Out of 283 cases only 9 are marketing issues. Glen said the industry thinks there are a lot of marketing violations. David Moore said the industry sees a lot of problems but are not turning them in for various reasons. Joyce said that the complaints they hear are that complaints are being called in but no action is taken. Darrel suggested one of the Commission members, or all of them, come to the office to see how the process works.
 - ❑ Paul Newton said 70% of the industry are members of ULTA, which has a code of ethics.
 - ❑ Curt suggested finding out what the ratio of investigators vs. licensees is in the Real Estate Division.
 - ❑ Darrel said that 50% of the department's complaints are title related.

- ❑ Perri said the department needs to prepare the S&O, the Commission sets the penalties, and the department sends them out. Perri said Real Estate sends out the S&O on slam-dunks and if they are signed and returned then that is it. If not, the department investigates. S&O should come to the Commission to agree on a fine. **Gerri said they would sort out the three types of violations that will go on the boilerplate S&O and bring to the Commission starting next month.**
- ❑ Glen **moved** to have the Commission acquaint itself with the department's complaint process and take on market conduct stand-alone violations of R590-153, 31A-23a-406 and 31A-23a-402. Joyce seconded it and the vote was unanimous in its favor. Gale needs to be involved.
- ❑ The Commission decided to meet Monday, June 11, 9am, to review the department's complaint and S&O process. At 10:30 a.m. they will then begin the Title Commission meeting. Lunch will be brought in.

VII. **New Business**

- **Update Limits in Unfair Inducement Rule R590-153 / Glen**
 - ❑ Glen suggested increasing the following to keep up with inflation:
 - Subsection 6.D. increase from \$10 per quest to \$15;
 - Subsection 6.E. increase from \$3 per client to \$5;
 - Subsection 6.G(3) increase \$10 per person to \$15; and
 - Subsection 6.H. increase \$50 to \$75.
 - ❑ Joyce made the **motion** to accept these changes. Perri suggested revising the entire rule now. It will take about 90 days.
 - ❑ Sheila described self-promotional item as those with a name imprinted on it.
 - ❑ It was suggested that 6.F(3) be increased from \$75 to \$100.
 - ❑ Curt **moved** to approve rule changes and file the rule for a hearing and comment period. Increase D. to \$15, E. to \$5, F (3) to \$100, G (3) to \$15; and H. to \$75. Glen seconded the motion and the vote was unanimous.
- **Response to October Research interview / Sheila**

A research questionnaire was sent to Gerri. Copies of the survey were given to the Commission. Glen **moved** to have the **chair respond** to it. Joyce seconded the motion. Perri suggested the Commission respond with a copy of Section 31A-2-202 along with a link to the Commission's list of priorities.

VIII. **Other Business**

It was suggested that a plaque and picture of the Commission with the Governor be given to those members being replaced. Jilene will set up an appointment with the Governor.

IX. **Executive Session**

At 12:10 Curt made the motion to address commission replacements and to go into closed Session. The session was taped but not made a part of the public minutes.

X. **Reminder:** Next Liaison Meeting

XI. **Adjourned: 12:33pm**

XII. **Next Meeting:** June 11, 2007, 10:30 a.m. at the State Office Building.

Next Meeting

9:00 a.m.

August 13, 2007

September 10, 2007

June 11, 2007

October 9, 2007

July 9, 2007

November 12, 2007

December 10, 2007